

Remarks

Claims 1-30 are pending in this application. The Office Action divided the claims into four species: species a, claims 1-14, drawn to a coated fuel cell bipolar plate having: i) a metal plate, ii) an electrically conductive corrosion resistant coating including porosities, and iii) an conductive overcoating sealing some or all of the porosities; species b, claims 15-24, 26 and 27, drawn to a coated fuel cell bipolar plate having: i) a metal plate, ii) an electrically conductive corrosion resistant coating including porosities, and iii) and overcoating being primarily localized on the porosities as an amorphous structure; species c, claim 25, drawn to a coated fuel cell bipolar plate having: i) a metal plate, ii) and electrically conductive corrosion resistant coating, and iii) and overcoating which is primarily localized on the porosities as an amorphous structure and which includes a discontinuous electrically insulating layer; and species d, claims 28-30, drawn to a coated fuel cell bipolar plate having: i) a metal plate, ii) an electrically conductive corrosion resistant coating, and iii) which is primarily localized on the porosities as an amorphous structure and which is electrically conductive. Applicants elect, with traverse, to prosecute species a. Claims 1-14 read on the elected species.

Applicants traverse the species election requirement as improper. The so-called “species” are not true species, because they are not mutually exclusive. Specifically, the features labeled by the Examiner as “species” are not mutually exclusive. For example, a conductive overcoating “sealing some or all of the porosities” may also be “primarily localized on the porosities as an amorphous structure”, depending on the particular configuration and materials. Moreover, the so-called “species” of claim 25 and of claims 28-30 cannot be mutually exclusive of the “species” of claims 15-24, 26 and 27, as claims 25 and 28-30 depend from claim 15.

The Examiner alleges in the Office Action (page 3, paragraph 2) that there are mutually exclusive characteristics requiring different fields of search. However, this conclusory allegation is without support. The Examiner fails to identify which characteristics are mutually exclusive or which different classes/subclasses would need to be searched for the so-called different “species”. See MPEP Section 808.2, which sets forth the Examiner’s establishing burden.

Given the substantial overlap of subject matter of these species, some of which may be capable of use together, the features or functionalities are not properly characterized as distinct species under M.P.E.P. § 808.01(a). In sum, the features labeled by the Examiner as “species” cannot appropriately be considered independent and distinct. The species election requirement therefore is improper and should be withdrawn.

In addition, Applicants traverse the species election requirement, because it would not require an undue burden to search and examine the four “species”. Applicants are entitled to include a reasonable number of species in a single application. Four is a reasonable number.

Claims 1-30 therefore should be considered together in this application.

It is therefore respectfully requested that the restriction requirement be withdrawn and that examination of claims 1-30 proceed on the merits.

Respectfully submitted,



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